82-1077

No._____

Office - Supreme Court, U.S.
FILED
NOV 24 1982
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

October Term, 1982

KEYSTONE CABLE-VISION CORPORATION and JAMES S. WILLIAMS,

Petitioner,

v.

THE FEDERAL COMMUNICATION COMMISSION and THE UNITED STATES OF AMERICA,

Respondent,

WARNER AMEX CABLE COMMUNICATION, et al,

Intervenor.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JAMES B. WILTSE
Attorney for Petitioner
1125 Frick Building
Pittsburgh, Pa. 15219
(412) 288-0707

QUESTIONS PRESENTED

1. Whether it is a violation of free speech of the First Amendment to the Constitution of the United States Article (1) and Property rights Article (5) by the FCC to take a possessed communication property, cable tv, from one party and give it to anther party through franchising by a city without notification or a hearing or a demonstrated cause.

2. Whether it is violation of the Sherman Anti-Trust Act No. 1 and the Civil Rights Act of 1871, Section 1983, for the FCC to participate with a city in a franchising process of cable tv so the city could collect fees for regulating cable tv, when only one could be installed in the city owned by the petitioner.

3. Whether under the Communication Act of 1934 as amended, the FCC can pass a rule contrary to the purpose intent and mandated rules contained in the act without an act of congress.

PARTIES

The parties in the United States Court of Appeal for the District of Columbia Circuit were the petitioner, the Federal Communication Commission, respondents, Warner Amex Cable Communication Inc. and Warner Cable Corporation of Pittsburgh, intervenor.

TABLE OF CONTENTS

Page

Questions Presented.....i

Parties.....ii

Petition For A Writ of Ceriorari.....1

Opinion Below.....1

Jurisdiction.....2

Constitutional
Provisions Involved Herein.....3

Statement of the Case.....5

POINT I. Since it is not disputed that James S. Williams and Keystone Cable-Vision Corporations has communication and property rights in the City of Pittsburgh of Cable TV and only one system can be installed, it is impossible for Key-Stone and Williams to lose these rights under a franchising process or by any other method set up to accomplish the same result.

Page

Because of the fact this court has ruled at No. 80-1350 Community Communication Company, Inc., petitioner v. City of Boulder Colorado, et al January 13, 1982 that a city may not regulate cable tv without that express right given to it by the state to do so, and the City of Pittsburgh has no such state rights given to it.....7

Conclusion.....20

Certification.....21

Appendix

Order of the United States Court of Appeal for the District of Columbia Circuit.....1a

Order Denying Rehearing.....2a

Others.....3a

Memorandum Opinion and Orders of the Federal Communication Commission.....5a

Others.....6a

TABLE OF AUTHORITIES.

Page

CASES CITED:

Community Communication Company, Inc. petitioner v. City of Boulder Colorado, et al, US No. 80-1350 January 13, 1982.....7

Donnon, Supra, 283A.2D at 93-94

Withrow v. Larkin 1975, 421 U.S.35.95S. CT. 1456.

Page

An Act of Congress:

The Communication Act of 1934 as amended

Act 1, 2, 3,.....8

Section 311-4.....9

A Rule of the Federal Communication Commission

CT Docket No 78-206

Section No. 21.....9

Page

Other Authorities:

United States Constitution:

First Amendment.....4

Fifth Amendment.....4

No._____

In the

SUPREME COURT OF THE UNITED STATES

October Term 1982

- X

KEYSTONE CABLE-VISION CORPORATION and
JAMES S. WILLIAMS

Petitioner,

v.

THE FEDERAL COMMUNICATION COMMISSION et al

Respondent,

WARNER AMEX CABLE COMMUNICATION INC, and
WARNER CABLE CORPORATION OR PITTSBURGH

Intervenor,

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT.

- X

PETITION FOR A WRIT OF CERTIORARI

OPINION BELOW

A copy of the opinion of the United States Court of Appeals for the District of Columbia Circuit, rendered the 31st day of August 1982, is annexed hereto as an appendix.

JURISDICTION

A.) The memorandum opinion and order was released January 26, 1982 by the Federal Communication Commission (FCC) without a hearing or testimony, which denied a complaint filed before it, after the adjudication of the case before the United States Court of Appeals for the District of Columbia Circuit at No. 80-2023.

It was alleged by the FCC that the complaint was an attack on Warner Cable of Pittsburgh registration and the FCC rules thereto, moreover the FCC alleges since it has passed a new rule of registration the petitioner has no recourse for recovery under the complaint.

The memorandum opinion and order of the FCC released January 26, 1982 is annexed as part of the appendix hereto.

B.) Reference is made here of the court below certified record previously filed before this court.

The order of affirmance of the United States Court of Appeals for the District of Columbia Circuit is dated July 21, 1982 and is annexed as part of the appendix hereto.

The order denying a rehearing was filed by the United States Court of Appeals for the District of Columbia Circuits on the 31st day of August 1982. A copy of which is annexed hereto as part of the appendix.

C.) The jurisdiction to review the judgement in question by certiorari is conferred under 28 U.S.C.§ § 1254. and 1257.

CONSTITUTIONAL PROVISIONS INVOLVED HEREIN

The First and Fifth Amendment of the United States Constitution are involved herein.

So far as pertinent, the First Amendment of the United States Constitution alleges:

> "Congress shall make no law abridging the freedom of speech or the right to petition the government for a redress of grievances."

So far as pertinent, the Fifth Amendment of the United States Constitution alleges:

> "No person shall be ***deprived of his life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

This case, we believe presents a conflict among the appeals court judges as to the interpretation of the complaint presented to them. Because of insufficient information upon which to base a decision upon by not requiring the administrative agency to file a certified index to record, the court in error, accepted the FCC allegations, when in fact, a separate panel of the same court had dismissed them by order at 80.2023 on December 5, 1980.

In the case at bar, there are questions in the complaint that have never before been before a court of jurisdiction and cannot be compared to any other. The certified index to record was imperative for fair adjudication, the record will show all illegal actions complained of.

The petitioner has (2) two separate decisions by two separate panels of the same appeals court that is in conflict with each other with identical votes margin.

In the appeals court at 80-2023, the panel accepted the petitioner's petition for review as a communication and property complaint and denied the respondents allegation that the complaint was an attack on Warner Cable Corporation of Pittsburgh (Warner) registration and the FCC rule making procedure, but denied the petition for lack of a final agency order, were the court to accept the FCC allegation, the petition would have been timely.

In the same appeals court at 82-1234, the petitioner filed the final agency order and also filed the same complaint as in 80-2023 and the appeal court panel affirmed the FCC claim that the complaint was an attack on Warner Cable Corporation of Pittsburgh registration and the FCC rule making procedure.

It is important to recognize that this case began under the FCC Certificate of Compliance and Certification Rule and continues under the FCC registration procedure rules. The facts in this case have never been ad-

judicated by a court of jurisdiction or the Federal Communication Commission or the appeals court. The petitioner's complaint claims full possession and control under the pertinent applicable laws. The appeals court separate panels ruled contrary to each other on these same issues and contrary to the ruling of this court at US No. 80-1350 on January 13, 1982, Community Communication Company, Inc., petitioner v. City of Boulder Colorado, et al forbidding cable tv regulating by a city without the express authority from the state, which the City of Pittsburgh does not have.

Williams and Keystone cannot lose its communication and property rights in a franchising and regulatory process or by any other method set up to accomplish the same result.

POINT I.

SINCE IT IS NOT DISPUTED THAT JAMES S. WILLIAMS AND KEYSTONE CABLE-VISION CORPORATION HAS COMMUNICATION AND PROPERTY RIGHTS IN THE CITY OF PITTSBURGH OF CABLE TV AND ONLY ONE SYSTEM CAN BE INSTALLED, IT IS IMPOSSIBLE FOR KEYSTONE AND WILLIAMS TO LOSE THESE RIGHTS UNDER A FRANCHISING PROCESS BY THE CITY OF PITTSBURGH PARTICIPATED IN AND APPROVED BY THE FCC OR BY ANY OTHER METHOD SET UP TO ACCOMPLISH THE SAME RESULT.

THIS COURT HAS RULED AT NO. 80-1350 COMMUNITY COMMUNICATION COMPANY INC., PETITIONER V. CITY OF BOULDER COLORADO ET AL, JANUARY 13, 1982 THAT A CITY MAY NOT REGULATE CABLE TV WITHOUT THAT EXPRESS RIGHT GIVEN TO IT BY THE STATE TO DO SO.

THE CITY OF PITTSBURGH HAS NO SUCH STATE RIGHT GIVEN TO IT.

So far as pertinent, the Communication Act of 1934 as amended Title 1, general provisions, state the purpose of the act:

> Sec. 1. For the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies.

So far as pertinent, the application of the act states Section 2A. The provision of this act shall apply to all interstate and foreign communication by wire or radio.

So far as pertinent, the definitions state Section 3A. Wire communication or communication by wire means the transmission of writing, signs, signals, pictures and sounds of all kinds by aid of wire, cable or other like connection between the point or origin and reception of such transmission, including all insturmentalities, facilities, apparatus and services among other things, the receipt,

forwarding and delivery of communication incidental to such transmission.

So far as pertinent, the Communication Act of 1934, as amended, states; Section 311-4, an application shall be deemed to be pending before the commission from the time such an application is filed with the commission until an order of the commission granting or denying it is no longer subject to rehearing by the commission or to review by any court.

So far as pertinent, No. 21 of the Federal Communication Commission, CT Docket 78-206 states that those cable systems with a Certificate of Compliance application presently pending before the commission will be considered to have registered and are free to initiate their new operations to the extent they are consistent with the rules, as of the effective date of the adoption of these new procedures. The application for certificate contains the information required for registration and, therefore, no need exists to have these systems refiled.

The petitioner filed their Certificate of Compliance and Certification before the FCC, on or about June 20, 1977, under FCC rules, the Communication Act of 1934, as amended, and the Constitution of the United States. The FCC accepted a corrected filing on or about August we, 1977, which contained a construction installation permit obtained from the City of Pittsburgh by the petitioner. The FCC filed the petition for public notice and suggested to the city to revoke the construction permit and file an opposition that would be accepted by the FCC and used to turn down the request for certification and Certificate of Compliance. Thie was confirmed by the city attorney at 375 of 78 at the Court of Common Pleas of Allegheny County.

The city filed an opposition suggested by the FCC and revoked the installation permit and alleged they had the right to regulate cable tv and collect fees for their service.

The petitioner prior to the revocation of the construction permit had begun to construct in a minor way a cable tv system in the City of Pittsburgh, a requirement of the construction permit of the building code of the City of Pittsburgh and as permitted by the FCC's rules and regulations.

On or about September 15, 1977, the FCC sent a representative to the City of Pittsburgh to work with the city to implement a city ordinance for the city to regulate franchises and collect fees for its services, while the petitioner's application to the FCC was still on public notice.

On December 23, 1977, the FCC turned down the petitioner's request for Certificate of Compliance and Certification, citing the revoked electrical permit and alleged the city had a right to regulate cable tv. The FCC turned down a request for reconsideration on on July 27, 1978, although fully aware the construction permit was on appeal at SA 375

of 78, city court.

THE ABOVE UNDISPUTED ACTION OF THE FCC AND THE CITY WAS ILLEGAL UNDER THE DUE PROCESS PROVISION OF THE CONSTITUTION OF THE UNITED STATES AND ARTICLE (1), FREE SPEECH, THE FCC'S OWN RULES AND REGULATIONS, THE CIVIL RIGHTS ACT OF 1871, TITLE 1983, AN ACT OF CONGRESS THROUGH THE COMMUNICATION ACT OF 1934, AS AMENDED, AND THE SHERMAN ANTI-TRUST ACT, NO.1.

The petition to the FCC was filed under its rules contained in the federal register on Monday, Aprill 22, 1974, Volume 39 No. 78 Part 2 P 14293 No. 45 and 45 which alleges. among other things, that the FCC must grant cable tv authority to a party when there are not any laws passed by local authority to control it. Of course, since that time, this court has ruled that a city may not regulate cable tv without express state authority and the City of Pittsburgh has no such authority.

The FCC accepted the city's allegation that James S. Williams was not a registered electrical contractor, when in fact the FCC had a copy of James S. Williams' license and a sworn affidavit to the contrary.

The right and permission for the petitioner to begin construction cable tv in the City of Pittsburgh is vested in the FCC rules, CT Docket 21002, FCC 76 1070 63 FCC 203 (1976) upon our filing of June 20, 1977, which alleges applicants are eligible to receive intern authorization upon filing.

THE FCC'S TAKING OF THE FIRST STEP TO PROMOTE OPPOSITION AND SUGGESTING WHAT TO SUBMIT TO THEM TO DENY PETITIONER'S APPLICATION AND BY ACCEPTING THE OPPOSITION, IS IN ITSELF GROUNDS FOR THIS COURT TO REVIEW THE ISSUES. THE STEPS TAKEN BY THE FCC WERE WITHOUT CAUSE OR LEGAL STANDING AND CONTRARY TO THE LAWS OF JUDICIAL PROCEDURE. THE FACT THAT THE FCC SENT A REPRESENTATIVE TO THE CITY OF PITTSBURGH TO SET UP A CITY ORDINANCE FOR THE CITY TO GIVE THE CITY THE RIGHT TO LICENSE AND GIVE CABLE TV RIGHTS TO ANY PARTY IT CHOOSES, SHOW WOULD PAY THE HIGHEST FEES, WHILE THE PETITIONER'S APPLICATION WAS ON PUBLIC NOTICE BY THE FCC, SUPPORTS THIS.

The petitioner filed before local federal court at 78-946F. The misconduct action of the FCC and the City of Pittsburgh in this matter, prior to the hearing, the FCC formed a rule, FCC CT Docket No. 78-206, Report and Order Proceeding Terminated and adopted a registration procedure.

The petitioner's application was still pending before the FCC under Section 311-4 of the Communication Act of 1934 which alleges an application to the commission shall be considered pending from the time of filing until it is no longer subject to review by the commission or the courts.

The FCC provided a copy of the FCC CT Docket No. 78-206 and informed the petitioner that we could recover under the rule in Paragraph 21, pending application, which alleges those applications with a Certificate of Compliance applications presently pending before the commission will be considered to have registered and are free to initiate their new opeartions to the extent that they are consistent with rules, as of the effective date of the adoption of these new procedures. Application for certificate contains the information required for registration and therefore, no need exists to have these systesm refiled.

The court also dismissed the case against the City of Pittsburgh and alleged recovery could be obtained at SA 375 of 78. The appeal of the city's revocation of the construction permit for cable tv, which is still pending there, a mormal 45 day case for a final ruling, is now over 4 years without one.

While awaiting the adjudication of the construction permit in local court, the petitioner was unaware that the FCC had continued to implement with the City of Pittsburgh, a cable tv ordinance to franchise cable tv, for the FCC had provided the petitioner with documents and papers showing that the petitioner was the cable tv operator in the City of Pittsburgh including the petitioner's FCC Physical System Identification No. 8091-01, among other things.

The City of Pittsburgh passed a cable tv ordinance with the aid of the FCC and implemented a franchising process, negotiated and awarded the cable tv system in City of Pitts-

burgh to Warner Cable of Pittsburgh for the payment of fees by Warner and other services who paid these fees to obtain the system for itself and denied any other system the right thereto.

The FCC accepted Warner's registration to install cable tv in the City of Pittsburgh with the full knowledge that the ordinance's call for one system and the public utilities, (the light and telephone hardware: can only support one system granted Warner Cable Corporation the right to install cable tv in the City of Pittsburgh through an ordinance and franchising process in which they were a participant with full knowledge that this right was granted to Keystone Cable-Vision Corporation and James S. Williams during the court adjudication process at 78-946F and by FCC rules at CT Docket No. 78-206, Section 21 pending application.

THE FCC THROUGH THEIR NEW METHOD OF REGISTRATION HAD EFFECTIVELY TAKEN A POSSESSED COMMUNICATION RIGHT AND PROPERTY OWNED BY KEYSTONE AND WILLIAMS AND GIVEN IT TO WARNER CABLE CORPORATION OF PITTSBURGH

THROUGH THE CITY OF PITTSBURGH'S FRANCHISING PROCESS WITHOUT NOTIFICATION OR A HEARING OR CAUSE. THE ACTION OF THE FCC HAS VIOLATED THE CONSTITUTION OF THE UNITED STATES AND DEDICATION FOR THE LAWS OF DUE PROCESS RIGHTS AND THE LAWS OF ANTI-TRUST, THE SHERMAN ANTI-TURST ACT, NO. 1 AND THE COMMUNICATION ACT OF 1934, AS AMENDED, UNDER WHICH IT IS SUPPOSED TO OPERATE, INCLUDING THE RULING OF THIS COURT.

Article (1) of the Constitution of the United States clearly alleges that congress shall make no law abridging the freedom of speech or the right to petition the government for a redress of grievances.

The petitioner filed before the Court of Appeals for the District of Columbia Circuit, a petition for review at 80-2023. The court accepted the petitioner's allegation that the petition was a property complaint and rejected the FCC's allegation that the petition was an attack on Warner Cable Corporation of Pittsburgh's registration and the FCC's registration rules, but dismissed the petition for lack of a final agency order. The petition would have been untimely if it was an attack

on the registration process, which it was not.

The court below jurisdiction was vested under 42. USC 1983 and 28 USC 1343 (3).

The petitioner filed before the FCC the same petition that was before the court at 80-2023. The commission again alleged that the petition was an attack on Warner Cable Corporation of Pittsburgh's registration and the FCC registration rules and rejected the hearing with the full knowledge that the court had rejected this allegation by the FCC; moreover, the commission also alleged that the court at No. GD 76-23612, Court of Common Pleas, Allegheny County has ruled in this case, a statement the FCC previously accepted submitted by the City of Pittsburgh, to them, when in fact, this case began from June 20, 1977, the first time a filing was made to the commission in this case after obtaining a construction permit on May 11, 1977.

It is impossible for a court to rule on a case in 1976 that is filed in 1977. The FCC claimed no party was served as required. The FCC's own record will show and the petitioner's certified mail receipt will show, to the contrary.

The petitioner again filed the same Petition for Review as at 80-2023 before the court below with the final agency order, a separate panel of the court affirmed the FCC's allegation that the petition was an attack on Warner Cable Corporation of Pittsburgh's registration and the FCC registration rules. The FCC's Motion to Affirm filing alone, is enough for this court to review their action, reference is made to the court below certified record and the court's attention is drawn to the FCC's Motion to Affirm sent to the petitioner and the letter contained therein and the petitioner's reply thereto.

The petitioner now has (2) separate rulings by the same appeals court (2) separate

panels contrary to one another on the same issue before the court, therefore the petitioner is appealing to this court for review.

If the FCC's action in this case is allowed to stand, it will set a foundation for it to form a governing division within the FCC with legislative, administrative and judicial power so vast that it would be accountable only to itself in cable television communication.

THIS COURT SHOULD REALIZE THAT CABLE TV WIRES ARE INSTALLED ON THE TELEPHONE AND LIGHT COMPANY POLES AND IN CONDUIT BETWEEN THEIR RESPECTIVE WIRES USING THEIR RIGHT OF WAYS AND THE UTILITY COMPANIES ARE PAID FOR THIS USE. THIS CAN BE COMPARED TO AN EXTRA STRAND IN A ROPE. THE CITY OF PITTSBURGH'S ONLY CONNECTION IS TO INSPECT THE INSTALLATION UNDER A CONSTRUCTION PERMIT WHICH WAS RECEIVED BY THE PETITIONER FROM THE CITY FOR WHICH WE PAID A FEE AND THE CITY STILL RETAINS THAT FEE. THE CITY HAS NO RIGHT TO ANY OTHER FEES FROM CABLE TV. THE COURT HAS RULED AT 375 OF 78 THAT THE PERMIT WAS LEGALLY OBTAINED IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, WHERE OTHER ISSUES REMAIN.

We have searched and found no legal right or purpose or benefit to the public for a city

to regulate cable tv, without the consent of congress.

CONCLUSION

The petition for certiorari should be granted this court should hold that the order and judgement below should be reversed on the grounds that Warner Cable TV System in Pittsburgh is illegal. Keystone and Williams is the only legal cable tv operator in the City of Pittsburgh and their possessed communication rights and property was illegally taken from them without a notification or a hearing or cause and given to Warner Cable Corporation of Pittsburgh by the FCC and moreover the FCC gave Williams and Keyston's communication rights through the City of Pittsburgh who has no authority to regulate cable tv in a franchising process forbidden by law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE FOREGOING PETITION FOR A WRIT OF CERTIORARI HAS BEEN MAILED TO ALL PARTIES WITH INTEREST IN THIS CASE WHO ARE REQUIRED TO BE SERVED ON THE DATE OF THIS FILING BEFORE THE COURT BY CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED. THOSE SO NOTIFIED ARE:

CHIEF COUNSELOR, FEDERAL COMMUNICATION COMMISSION

COUNSELOR FOR WARNER AMEX CABLE COMMUNICATION, INC.

SOLICITOR GENERAL OF THE UNITED STATES

U.S. DEPARTMENT OF JUSTICE, ANTITRUST DIVISION

CITY COLICITOR, CITY OF PITTSBURGH, PENNSYLVANIA

ON NOVEMBER 24 1982

James S. Williams

JAMES S. WILLIAMS
FOR THE PETITIONER

DATED NOVEMBER 24 1982